

Twelve Claims Arising out of Common Embezzlement Scheme Are "Single Claim"

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An Illinois Appellate Court has held that multiple claims arising from an embezzlement scheme perpetrated by an employee of an insured law firm constitute "related claims" subject to a single "each claim" limit of liability. *Continental Casualty Co. v. Howard Hoffman & Assoc.*, 2011 IL App (1st) 100957 (Ill. App. Ct. Aug. 15, 2011). Wiley Rein LLP represented the insurer.

A non-lawyer employee of the insured firm embezzled funds from at least 16 probate estates that were represented by the firm. Claims for losses were asserted against the firm by 12 of the estates, including three lawsuits. While engaged in the management of the firm's probate files, the employee made out checks to herself on the accounts of at least 15 of the estates. She concealed the forgeries by causing the monthly bank statements to be destroyed so that a reviewing attorney would not notice her withdrawals. Total losses from the claims and lawsuits were expected substantially to exceed \$300,000, the aggregate limit of liability of the law firm's professional liability policy.

In addition to the aggregate limit of liability, the firm's professional liability policy also contained a \$100,000 "each claim" limit of liability. And, under the policy, "related claims" were considered a single claim, subject to a single \$100,000 limit of liability. Related claims were defined as "all claims arising out of a single act or omission or related acts or omissions in the rendering of legal services." "Related acts or omissions" were defined to mean "all acts or omissions in the rendering of legal services that are temporally, logically, or causally connected by any common fact, circumstance, situation, transaction, event, advice or decision."

The insurer filed a lawsuit seeking a declaration that the embezzlement claims constituted "related claims," subject to a single limit of liability. The insureds and underlying claimants contended that the policy's inclusion of the phrase "logically . . . connected" in the definition of related acts or omissions rendered the policy ambiguous on its face. The court rejected this argument, holding that the policy's definitions of "related claims" and "related acts or omissions" were not ambiguous merely because they include the concept of a logical connection.

Applying the policy language, the court held that the employee's intentional decision to embezzle from the various estates fell within the policy's related claims language. Although the scheme involved the accounts of different estates, the court noted that the employee's actions had "common ties" and involved the same

"modus operandi." Accordingly, the court determined that the scheme constituted "an action in general" or a "wrongful or unlawful deed." The scheme to embezzle estate funds was, the court held, a "common fact circumstance, situation or decision" under the policy. The court held further that the defendants' alleged failure to manage litigation involving the various estates or properly to supervise the employee-however pled-were allegations of acts and omissions logically and causally connected by the embezzlement scheme. Accordingly, the court held that the claims and lawsuits constituted a single claim and that one "each claim" limit of liability applied.